

Amy M. Samberg (#013874)
Amy L. Stein (#026113)
FORAN GLENNON PALANDECH PONZI & RUDLOFF PC
1 East Washington Street, Suite 500
Phoenix, Arizona 85004
Telephone: (602) 777-6230
Facsimile: (312) 863-5099
E-Mail: asamberg@fgppr.com
astein@fgppr.com
Attorneys for Defendant The Travelers Home and Marine
Insurance Company

IN THE UNITED STATES DISTRICT ARIZONA
FOR THE DISTRICT OF ARIZONA

Diana Okabayashi, an Arizona Resident,

Plaintiff,

v.

The Travelers Home and Marine Insurance
Company, a Foreign Insurer,

Defendant.

No:

Maricopa County Superior Court
No. CV2017-010871

**NOTICE OF REMOVAL OF
ACTION; VERIFICATION OF AMY
STEIN**

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. § 1446, Defendant THE TRAVELERS HOME AND MARINE INSURANCE COMPANY (“Travelers”) hereby petitions this Court for removal of the state court action, which was originally commenced in the Superior Court of the State of Arizona in and for the County of Maricopa, entitled *Diana Okabayashi vs. The Travelers Home and Marine Insurance Company, et al.*, Case No. CV2017-010871, on the following grounds:

1. On or around September 7, 2017, an action was commenced in the Superior Court of Arizona, County of Maricopa, entitled *Diana Okabayashi vs. The Travelers Home and Marine Insurance Company, et al.*, Case No. CV2017-010871 (the “State Court Action”). A true and correct copy of the Complaint is attached as **Exhibit 1**.

2. On September 8, 2017, a Summons and the Complaint were served on Travelers through the Director of Insurance, Arizona Department of Insurance. A true and

1 correct copy of the Summons and Notice of Service of Process are attached hereto as
2 **Exhibit 2.**

3 3. Attached, collectively, as **Exhibit 3** are copies of all other process, pleadings,
4 and orders filed in the State Court Action: Coversheet and Certificate on Compulsory
5 Arbitration.

6 4. The thirty-day period for removal does not begin to run until the party has
7 been properly served. See *Murphy Brothers Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S.
8 344, 347–48 (1999). Thirty days have not elapsed since Travelers received the Summons
9 and Complaint in this action. Accordingly, this Notice is timely filed under 28 U.S.C. §
10 1446(b).

11 5. Plaintiff's Complaint appears to allege causes of action for breach of
12 insurance contract and insurance bad faith against Travelers. See **Exhibit 1.**

13 VENUE

14 6. Under 28 U.S.C. § 1446(a), venue of this action is proper in this Court as the
15 district and division within which the State Court Action was brought.

16 JURISDICTION

17 7. Under 28 U.S.C. § 1441, Congress has granted defendants the statutory right
18 to remove a case from state court to a United States District Court where that case could
19 have originally been filed in federal court. This grant is authorized by Article III, Section
20 2 of the United States Constitution, which extends judicial power of the federal courts to
21 controversies "between citizens of different states." 28 U.S.C §1332.

22 8. Removal is proper in this case because the Court has original jurisdiction of
23 this action under 28 U.S.C. § 1332 because there is complete diversity of citizenship
24 between the parties and the amount in controversy, exclusive of interest and costs, exceeds
25 \$75,000.00. See 28 U.S.C. § 1441.

AMOUNT IN CONTROVERSY

9. The amount in controversy exceeds \$75,000, exclusive of interest and costs. Pursuant to the allegations of Plaintiff's Complaint, bad faith is evidenced by the fact Plaintiff was awarded \$175,000 at arbitration after Travelers had refused to tender the subject insurance policy's \$100,000 limits. (See **Exhibit 1**, Complaint, pages 2 - 4). Plaintiff's alleged damages allegedly caused by Travelers' conduct are the difference between the arbitration award and the policy limits. Travelers reads the Complaint as if Plaintiff Okayabashi makes this contention, and Plaintiff's counsel has not clarified or confirmed otherwise. Additionally, Plaintiff seeks as damages for alleged ruination of credit. (See **Exhibit 1**, Complaint, pages 5 - 6).

10. Travelers does not concede that it is guilty of any conduct that would warrant the imposition of any of the damages alleged by Plaintiff or that the claimed damages were causally related to the conduct alleged against it, but based on the foregoing, Travelers believes that the evidence shows that the amount in controversy with respect to Plaintiff is in excess of \$75,000.00.

GEOGRAPHICAL DIVERSITY

11. Upon information and belief, Plaintiff is a citizen of Arizona. See **Exhibit 1**, Complaint, page 1, lines 19-20.

12. Travelers is an insurance company organized and existing under the laws of the State of Connecticut with its principal place of business in the State of Connecticut.

13. This case meets the requirements for original jurisdiction in this Court stemming from diversity of citizenship as set forth in 28 U.S.C. § 1332(a).

REMOVAL IS PROPER

14. This Notice of Removal is timely filed because it was filed within thirty days after receipt of the Summons and Complaint by Travelers and is filed within one year of the filing of the Complaint. 28 U.S.C. § 1446(b).

15. Travelers will also timely file a Notice of Removed Action with the Clerk of the Maricopa County Superior Court.

16. Travelers is providing written notice to Plaintiff. 28 U.S.C. § 1446(d).

17. Travelers reserves the right to amend or supplement this Notice of Removal.

WHEREFORE, Travelers hereby requests that the action now pending against it in the Superior Court of the State of Arizona, in and for the County of Maricopa, be removed to this Court.

DATED this 9th day of October, 2017.

FORAN GLENNON PALANDECH
PONZI & RUDLOFF PC

By: s/ Amy L. Stein

Amy M. Samberg
Amy L. Stein
1 East Washington Street, Suite 500
Phoenix, Arizona 85004
Attorneys for Defendant The Travelers
Home and Marine Insurance Company

VERIFICATION OF AMY STEIN

I, Amy Stein, verify as follows:

1. I am an active member in good standing of the State Bar of Arizona and a partner with the law firm of Foran Glennon Palandech Ponzi & Rudloff, P.C., counsel of record for Defendant The Travelers Home and Marine Insurance Company.

2. I have firsthand knowledge of the matters set forth herein. I submit this verification pursuant to L.R. Civ. P. 3.6 and Fed. R. Civ. P. 11.

3. Attached as **Exhibit 1** is a true and correct copy of the Complaint originally filed in the Superior Court of the State of Arizona, in and for the County of Maricopa, entitled *Diana Okabayashi vs. The Travelers Home and Marine Insurance Company, et al.*, Case No. CV2017-010871 (the "State Court Action.")

4. Attached as **Exhibit 2** are true and correct copies of the Summons directed to Travelers in care of the Director of Insurance, Arizona Department of Insurance and the Notice of Service of Process.

5. Attached collectively as **Exhibit 3** are copies of all other process, pleadings, and orders filed in the State Court Action: Coversheet, Certificate on Compulsory Arbitration and Certificate of Service.

6. Attached as **Exhibit 4** is a true and correct copy of the Notice of Removed Action filed with the Clerk of the Maricopa County Superior Court, Case No. CV2017-010871.

7. The amount in controversy exceeds \$75,000, exclusive of interest and costs. Pursuant to the allegations of Plaintiff's Complaint, bad faith is evidenced by the fact Plaintiff was awarded \$175,000 at arbitration after Travelers had refused to tender the subject insurance policy's \$100,000 limits. (See **Exhibit 1**, Complaint, pages 2 - 4). In Travelers' experience, insureds such as Plaintiff claim the difference between the arbitration award and the policy limits as the damage caused by Travelers' alleged conduct. Travelers reads the Complaint as if Plaintiff Okayabashi makes this contention, and Plaintiff's counsel

has not clarified or confirmed otherwise. Additionally, Plaintiff seeks as damages for alleged ruination of credit. (See **Exhibit 1**, Complaint, pages 5 – 6).

I verify that the foregoing is true and correct.

Executed this 9th day of October, 2017, at Phoenix, Arizona

FORAN GLENNON PALANDECH
PONZI & RUDLOFF, PC.

By: s/ Amy L. Stein.
Amy M. Samberg
Amy L. Stein
1 East Washington Street, Suite 500
Phoenix, Arizona 85004
Attorneys for Defendant The Travelers
Home and Marine Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2017, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants below:

- ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).
- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Phoenix, Arizona addressed as set forth below.
- ☒ **BY ELECTRONIC SERVICE:** submitted to the above-entitled Court for electronic service upon the Court's Service List for the above-referenced case.

/s/ Brenda Uran